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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHRISTOPHER M. GLENNA and PAUL J. RICHTMAN

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Appeal 2009-011495  
Application 10/664,429  
Technology Center 1700

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Before CHUNG K. PAK, CATHERINE Q. TIMM, and  
LINDA M. GAUDETTE, *Administrative Patent Judges*.

TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision to reject claims 15-17 and 19-30 (Supp. Br. 2).<sup>1</sup> The Examiner rejects claims 15-17, 20-25 and 27-30 under 35 U.S.C. § 103(a) as unpatentable over Dills (US 4,512,462) in view of Hammond (US 2,015,268), and adds Golub (US 2,329,527) to reject claims 19 and 26.

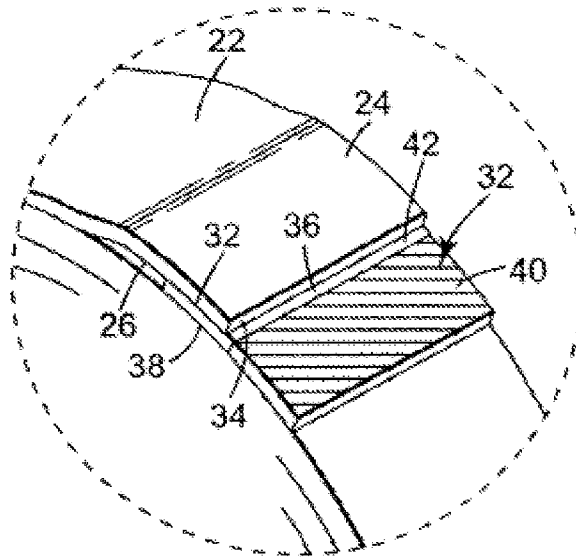
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<sup>1</sup> The Supplemental Appeal Brief filed June 7, 2007 replaces the originally filed Brief of April 10, 2006 (Supp. Br. 1).

We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

Appellants' invention relates to adhesive tape and, particularly, to a tab for marking the start of a roll of adhesive tape (Spec. 1:9-11). The invention is illustrated by Figure 3a, reproduced below:



**Fig. 3a**

Figure 3a is an enlarged perspective view of a tab (32) arranged on an adhesive tape roll (Spec. 5:14-15).

Tab (32) shown in Figure 3a includes a non-adhesive portion (40) (cross-hatched portion) and an adhesive portion (42) extending under the trailing end (34) of the tape (Spec. 7:16-28). The adhesive is located on the underside (38) of the adhesive portion (42) of tab (32) (*id.*)

Appellants state that claims 15 and 21-30 stand or fall together (Supp. Br. 5). Appellants further state that claims 16, 17, 19, and 20 stand or fall together (*id.*). Appellants do not provide any additional argument directed to the rejection of claims 19 and 26, which further relied upon Golub as evidence of obviousness (Supp. Br. 11). We select claims 15 and 16 as

representative for deciding the issues on appeal. Claims 15 and 16 are reproduced below with reference numerals from Figure 3a inserted:

15. A tape roll comprising:

a central tape roll axis;

a length of tape (22) comprising a leading end, a trailing end (34) opposite the leading end, a first side (outward-facing topside 24), and a second side (inward-facing underside 26) opposite the first side, wherein the second side (26) of the tape is at least partially covered with pressure sensitive adhesive, and wherein the tape is circumferentially wound about the axis until a plurality of adjacent tape layers are wound; and

a tab (32) having first and second opposite ends, a first side (topside 36), and a second side (underside 38) opposite the first side, wherein at least a portion of the second side (38) of the tab (32) is covered with pressure sensitive adhesive;

wherein the adhesive portion (42) of the second side (38) of the tab (32) is adhered to the first side (24) of the tape (22) on a penultimate layer of the roll so that the trailing end (34) of the tape overlays the tab (32) between the first and second ends of the tab.

16. The tape roll of claim 15, wherein the second side (38) of the tab (32) comprises:

a non-adhesive portion (40) having first and second ends, the first end of the non-adhesive portion coinciding with the first end of the tab; and

the adhesive portion (42) of the second side (38) of the tab having first and second ends, the first end of the adhesive portion being located adjacent to the second end of the non-adhesive portion, and the second end of the adhesive portion coinciding with the second end of the tab.

(Claims 15 and 16; *see also* Summary of Claimed Subject Matter filed April 15, 2008 and Spec. 5:30 to 7:28.)

## II. DISPOSITIVE ISSUES

The issues are as follows:

Issue 1: Does the evidence as a whole when viewed in light of the applicable law support the Examiner's finding of a reason to apply adhesive to the underside of the tab of Dills as required by claim 15?

Issue 2: Does the evidence as a whole when viewed in the light of the applicable law support the Examiner's finding that Hammond describes a tab with a non-adhesive portion and an adhesive portion of the structure required by claim 16?

We answer the first question in the affirmative, but the second question in the negative.

## III. DISCUSSION

The key limitation at issue in the claims concerns the location of adhesive on the tab (32). With regard to claim 15, the adhesive must cover at least a portion of the underside (38) of the tab (32), and can cover the entire underside (38). Claim 16 further defines the structure of the adhesive portion (42) and defines a non-adhesive portion (40)

### A. ISSUE 1 (CLAIM 15)

With regard to the first issue, we determine that the evidence as a whole when viewed in light of the applicable law supports the Examiner's finding of a reason to apply adhesive to the underside of the tab of Dills as required by claim 15.

There is no dispute that Dills describes a tape roll (22) having a removable, reusable tab (10) with an opening (18) (Supp. Br. 6; Ans. 3). As pointed out by Appellants, and as evident from Dills, Dills' tab (10) does not have adhesive on either of its sides, but instead relies on the adhesive of the tape (20) that projects through the opening (18) to adhere the tape (16) and

tab (10) to the remainder of the tape roll (22) as shown in Dills' Figure 3 (Supp. Br. 6; Dills, Figs. 1-3 and col. 2, ll. 61-66). Figure 1 and a portion of Figure 3 of Dills is reproduced below:

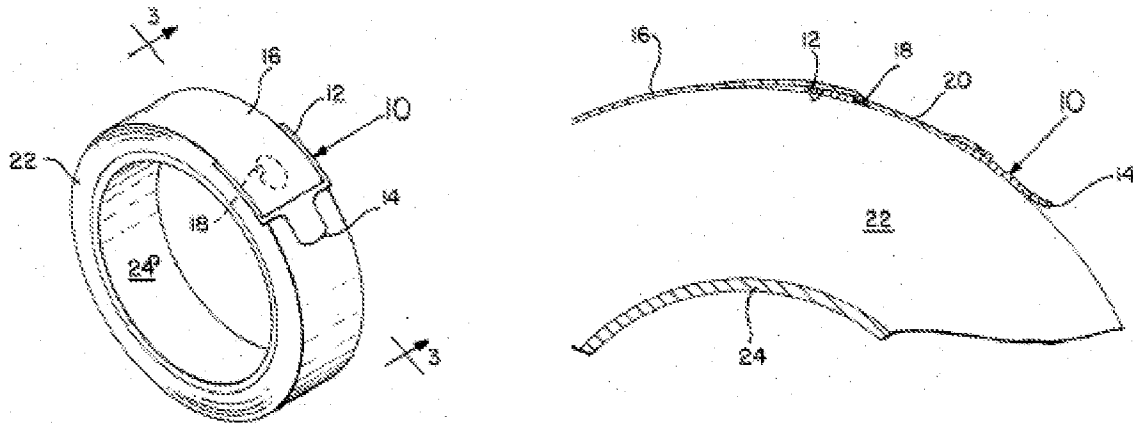


Figure 1, reproduced on the left, is an isometric view of a roll of tape including a tab (10) with hole (18) (Dills, col. 2, ll. 32-33).

The portion of Figure 3, reproduced on the right, is a sectional view taken along lines 3-3 of Figure 1 (Dills, col. 2, ll. 37-38).

Hammond discloses a tape roll (a) having a loose end (b). There is no dispute that Hammond describes a tab strip (c) having adhesive on its underside adhered to the periphery of the tape roll (e) (Supp. Br. 6; Hammond, p. 1, col. 2, ll. 20-25; Figs. 1-3). Figures 1-3 of Hammond are reproduced below:

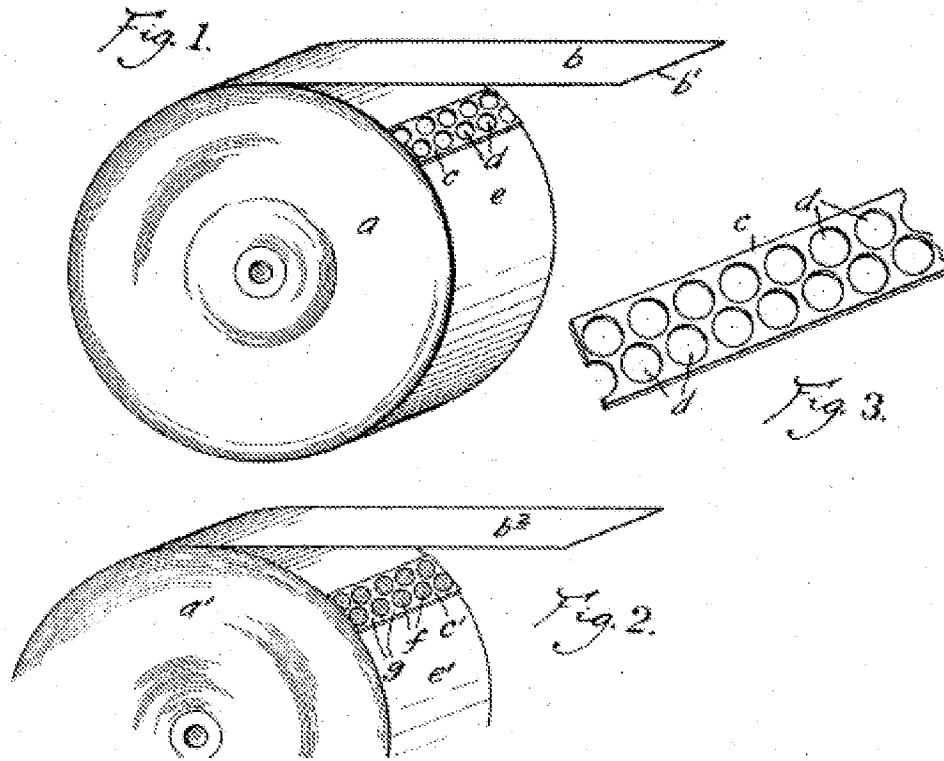


Figure 1 is a perspective view of a tape roll including the strip tab (c) with holes (d) shown in Figure 3 (Hammond, p. 1, col. 2, ll. 3-6 and 25-27).

Figure 2 is a perspective view illustrating an embodiment including a strip tab (c) with non-adhesive spots instead of holes (Hammond, p. 1, col. 2, ll. 8-10; p. 2, col. 1, ll. 11-21).

Figure 3 illustrates the strip tab (c) having holes (d) (Hammond, p. 1, col. 2, ll. 11-14 and 25-27).

In both embodiments of Hammond, the underside of the tab strip (c) includes an adhesive layer for adhering the tab strip (c) to the tape roll periphery (e) (Hammond, p. 1, col. 2, ll. 27-29; Figs. 1 and 3).

In undertaking an obviousness analysis, the question to be asked is whether the modification is more than the predictable use of prior art elements according to their established functions. This is because “[t]he

combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

In the present case, the evidence as a whole supports the conclusion that one of ordinary skill in the art would have understood that applying adhesive to the underside of the tab of Dills would have been a viable alternative to, or even addition to, using the adhesive of the upper layer of the tape through the hole to adhere the tab to the tape roll. This follows from the fact that adhering a tab to a tape roll by adhesive on the underside of a tab was known in the art as evidenced by Hammond. Under the circumstances, we cannot agree with Appellants that the Examiner reversibly erred in rejecting claim 15 as obvious under the law.

#### B. ISSUE 2 (CLAIM 16)

With regard to claim 16, we agree with Appellants that this claim requires adhesive and non-adhesive portions of a structure not taught by Hammond (Supp. Br. 9-10). Specifically, claim 16 requires that the non-adhesive portion have first and second ends. The round non-adhesive spots of Hammond do not have two ends. Moreover, claim 16 requires that the non-adhesive portion be located on the second side, i.e., the underside of the tab. In Hammond, the non-adhesive spots are imprinted on the topside of the tab, and are not located on the underside (Hammond, p. 2, col. 1, ll. 11-21).

The evidence as a whole does not support the Examiner’s finding that Hammond describes a tab with a non-adhesive portion of the structure required by claim 16.



### III. CONCLUSION

On the record before us, we sustain the rejection of claims 15, 21-25 and 27-30 under 35 U.S.C. § 103(a) as unpatentable over Dills in view of Hammond, and the rejection of claim 26 over Dills, Hammond, and Golub.

We do not sustain the rejection of claims 16, 17, and 20 over Dills and Hammond or the rejection of claim 19 over Dills, Hammond, and Golub.

### IV. DECISION

The decision of the Examiner is affirmed-in-part.

### V. TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART